



DEPARTMENT OF STATE
ACTION MEMORANDUM

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August 19, 1972

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1 to TO : The Acting Secretary

FROM: SCI - Herman Pollack

Negotiation of U.S. Safeguards Agreement
with IAEA: Circular 175 Request

In connection with the negotiation of the Treaty on the Non-Proliferation of Nuclear Weapons, President Johnson in 1967 offered to permit the IAEA to apply safeguards to all U.S. nuclear facilities, except those directly related to the national security, at such time as the Agency was applying safeguards under the NPT. President Nixon subsequently reaffirmed the offer when he transmitted the Non-Proliferation Treaty to the Senate in February, 1969.

The offer was designed to overcome the resistance of non-nuclear-weapon states (particularly the FRG, Italy, and Japan) to the NPT. These countries were concerned that international inspection might jeopardize their industrial secrets and work to their commercial disadvantage in relation to the nuclear-weapon countries, which were not obliged to accept safeguards under the Treaty. The U.S. offer was intended to lay these concerns to rest by demonstrating U.S. willingness to subject itself to the same international inspection system as would be applied under the NPT to the non-nuclear-weapon states. The AEC held consultations with representatives of the American nuclear industry before the offer was made. Consultations were also held with the appropriate Congressional committees.

The UK made a similar offer, but the mode of implementation is uncertain in view of British entry into the European Community. The USSR did not, on the grounds that the application of "non-proliferation" safeguards in a country which already has nuclear weapons is pointless.

At present, NPT safeguards agreements have been approved by the IAEA Board of Governors for 26 countries, including Canada, East Germany, Norway, Denmark, and

Finland, as well as Poland and four other Eastern Europeans, and 16 smaller countries around the world. Most of the remaining original parties to the Treaty should be in negotiation with the IAEA on safeguards agreements shortly.

Since the U.S. offer was largely aimed toward gaining the adherence of the Euratom countries and Japan to the NPT and since negotiations between the Euratom countries and the IAEA now appear to be progressing on a timely basis and nearing completion, it is desirable for the U.S. to initiate formal negotiations with the IAEA in the near future. We would not propose, however, to have our agreement come into effect prior to the time the agreements with Euratom and other key industrialized countries also are concluded.

As the result of intensive consideration by an ad hoc IAEA safeguards committee of 47 governments between June, 1970, and September, 1971, proposed terms and conditions for NPT safeguards agreements under the NPT have been developed and published in IAEA Document INFCIRC/153, "The Structure and Content of Agreements Between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons" (Tab A). This document has been the basis for all of the NPT safeguards agreements negotiated so far, and has constituted the starting point of the Agency's negotiations with Euratom.

It has been the IAEA practice, which the U.S. endorses, to keep to a minimum any deviations from the standard terms and conditions set out in the Agency's document and to confine such deviations to those which can be readily and reasonably related to the special circumstance of the particular situation. For this reason, it should be the objective, in negotiating an agreement with the Agency for NPT-type safeguards in the United States, to start with INFCIRC/153 and conform to its provisions to the greatest extent possible, although we expect that some modifications will be necessary, taking into account the character of the agreements being negotiated with other countries.

The Presidential offer is cast broadly enough to permit IAEA safeguards and inspections covering all U.S. nuclear facilities and material except for those directly related to national security considerations. Full implementation of the offer in every single installation would, however, place an intolerable financial and manpower burden on the IAEA out of all proportion to the degree of coverage necessary to serve its purpose. Moreover, it would divert the Agency's limited resources in the safeguards field away from application to the non-nuclear-weapon states.

Accordingly, an informal group of member states of the IAEA, under the leadership of Australia and including participation from the FRG and Japan, has suggested that the U.S. offer be implemented by the IAEA in a manner which will subject to full inspection only those facilities which are innovative or involve technologies in competition with those of the more advanced non-nuclear-weapon states in international commerce, with the remainder of the U.S. facilities being subject only nominally to the full impact of IAEA inspections. Although the details have not been developed, we are hopeful that this approach would reduce the actual intensity of the IAEA effort within the U.S. to a reasonable level, without there being any derogation from the Presidential offer. We also hope to work out arrangements whereby the Agency would avoid inequitable treatment among similarly situated U.S. firms.

The Legal Memorandum for authorization of the agreement is attached at Tab B.

Recommendation:

That you authorize:

(a) initiation of an agreement with the IAEA for the application of safeguards to U.S. nuclear facilities consistent with the Presidents' offer, the scope and content of the agreement being generally consistent with the Agency's standard NPT safeguards provisions as minimally modified to accommodate selective, rather than comprehensive, application by the IAEA within this country;

(b) presentation of the text of such an agreement for the Secretary's approval at the conclusion of negotiations, provided that the text is acceptable to the Bureaus of SCI, PM, and IO, the Office of the Legal Adviser, the Atomic Energy Commission, and the Arms Control and Disarmament Agency, and that these offices and agencies concur in the decision to sign in the light of any relevant intervening developments.

APPROVE _____
AUG 24 1972
3/24/72 Disapprove _____
Date _____

Concurrences:

L	- Mr. Aldrich	H	- Mr. Weiss
L/SCI	- Mr. Maurer	PM/AE-	Mr. Handyside
IO/SCT	- Mr. Trevithick	USAEC-	Dr. Friedman
S/PC	- Mr. Gathright	ACDA -	Mr. Van Doren
EUR/RPE-	Mr. Haendler	PM/DCA-	Mr. Shaw

Drafter:
SCI/AE:DQZook:fej
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